

REMARKS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe the subject matter which applicant regards as the invention.

The Examiner has objected to the specification for the way 3rd party trade names have been recited. These recitation instances have been amended based on the Examiner's comments. Reconsideration and withdrawal of the objection to the specification is respectfully requested.

Claims 1-26 remain in the application. Claim 1 has been amended herein. Claim 1 now includes an additional feature and disclosure for this feature is provided at paragraphs [0021], [0082] and [0093] of the Substitute specification.

Claims 1-26 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, the Examiner questions the implant portion's relationship to the implant. This claim has been amended to state that the implant comprises an implant portion. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-20 under §112, second paragraph. Alternatively, if the amendment is not found to be persuasive, Applicant requests that the Examiner consider use of the word "implantable" to describe the implant portion.

Claims 1-19 and 20-26 stand rejected under 35 U.S.C. §102(b) as being anticipated by WO/02069817 to Aeschlimann et al. (hereinafter Aeschlimann). For

the following reasons, the Examiner's rejection is traversed.

Aeschlimann discloses implants that create a positive fit connection to a tissue part, in particular to bone, in order to connect tissue parts to one another or tissue parts to means which support or replace tissue parts or to auxiliary devices. These implants according to Aeschlimann comprise liquefiable material such as thermoplastic polymers on the implant surface. Upon application of mechanical vibration to the implant during the implantation procedure, portions of this material are liquefied and flow into pores of the surrounding tissue parts to form a positive fit connection.

Claim 1 requires an implant comprising an implant portion with cutting edges. Applicant believes that Aeschlimann does not disclose such cutting edges. The Examiner states that, in Fig. 22, cutting edges are shown as elements along the left hand side of a permeable sleeve 13. However, these elements point towards the proximal end of the sleeve 13, and as a result cannot provide a cutting function. On the opposite side of sleeve 13 are elements pointing in an opposite direction, but Aeschlimann contains no disclosure regarding these elements (labeled C,D,E by the Examiner). Specifically, there is nothing disclosed regarding their design, construction or function. Further, there is no suggestion that these elements could be cutting edges.

Additionally, claim 1 requires that the cutting edges be located outside the first type of surface ranges provided or the second type of surface ranges to be created. In view of Applicant's arguments with regard to the illustrated elements C,D,E (and those on the opposite side of the sleeve) not being cutting edges, Aeschlimann further does not disclose, teach or suggest that cutting edges, in

general, are or need be located outside of a surface range of material liquefiable by mechanical oscillation.

Also, a person skilled in the art of organic chemistry knows that the pores in a permeable sleeve must have a size in the order of 0.3-0.4 mm such that the plastic material can be pressed through the pores without applying an unreasonable amount of force. However, the person skilled in the art appreciates also that with such porous material, it is impossible to fabricate cutting edges from it. Thus, cutting edges made from such a porous material and also outside of a surface of plastic material is not suggested.

Further, as claim 1 has been amended, it now requires that the cutting edges are cutting edges of step-shaped reductions in cross sectional area towards the distal end of the implant portion. Aeschlimann does not disclose this feature. The protruding spikes (elements C,D,E and those on the opposite side of the sleeve), even if the skilled person would regard them as cutting edges (which is disputed above), reach out to an approximately equally distant point from the implant axis (or even for the two more distal protruding spikes, they reach out to a slightly increased distance from the implant axis) and they are therefore not outer edges of step-shaped *reductions* in cross sectional area of the implant portion to be implanted.

For at least the reasons above reconsideration and withdrawal of the rejection of independent claim 1 and claims 2-19 and 21-26 that depend directly or indirectly therefrom under §102(b) is respectfully requested.

Claim 20 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Aeschlimann in view of U.S. 6,142,782 to Lazarof (hereinafter Lazarof). For the following reasons, the Examiner's rejection is traversed. Even if the references were

combined in the manner suggested by the Examiner, all of the features of the claimed invention would not be taught or suggested. Further teachings are necessary.

Lazarof is directed to an implant to be implanted into a bore comprising an implanted elongated hollow body with a skirt which is readily movable in the bore from a retracted position in an expanded position.

Claim 20 depends from claim 1 and as stated above, claim 1 requires: 1) cutting edges, 2) that these cutting edges are more outside of the surface matters, and 3) the cutting edges are part of a step down to the distal end. As stated above, these features are not disclosed or taught by Aeschlimann. Lazarof also does not teach or suggest these features, as Lazarof does not teach any cutting edges, in the manner claimed in Applicant's invention. Instead Lazarof teaches a skirt that includes anchor segments.

Reconsideration and withdrawal of the rejection of claim 20 under 35 U.S.C. §103(a) is respectfully requested.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 18-0160, our Order No. FRG-15998.

Respectfully submitted,

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